UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
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EASTERN OHIO PHYSICIANS ORGANIZATION, INC.,	*	**CASE NUMBER 01-40410**
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Debtor.	*	
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EASTERN OHIO PHYSICIANS ORGANIZATION, INC.,	*	
	*	
Plaintiff,	*	
	*	
vs.	*	**ADVERSARY NUMBER 02-4020**
	*	
COMMUNITY INSURANCE COMPANY dba ANTHEM BLUE CROSS AND BLUE SHIELD,	*	
	*	
Defendant.	*	
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M E M O R A N D U M O P I N I O N
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This matter came before the Court on cross motions for summary judgment. Plaintiff Eastern Ohio Physicians Organization, Inc. ("EOPO" or "Plaintiff") filed Plaintiff's Motion for Partial Summary Judgment on September 26, 2003. Defendant Community Insurance Company dba Anthem Blue Cross and Blue Shield ("Anthem" or "Defendant") filed its Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment and Anthem's Motion for Summary Judgment on August 16, 2004. EOPO filed its Reply Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment on

August 20, 2004, and filed Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment on August 25, 2004. Finally, Anthem filed its Reply Memorandum in Support of Defendant's Summary Judgment Motion on September 3, 2004. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E). The following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

S T A N D A R D O F R E V I E W

The procedure for granting summary judgment is found in FED. R. CIV. P. 56(c), made applicable to this proceeding through FED. R. BANKR. P. 7056, which provides, in part, that:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

FED. R. BANKR. P. 7056(c). Summary judgment is proper if there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). A fact is material if it could affect the determination of the underlying action. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Tenn. Dep't of Mental Health & Retardation v. Paul B.*, 88 F.3d 1466, 1472 (6th Cir. 1996). An issue of material fact is genuine if a rational fact-finder could find in favor of either party on the

issue. *Anderson*, 477 U.S. at 248-49; *SPC Plastics Corp. v. Griffith (In re Structurlite Plastics Corp.)*, 224 B.R. 27 (B.A.P. 6th Cir. 1998). Thus, summary judgment is inappropriate "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248.

In a motion for summary judgment, the movant bears the initial burden to establish an absence of evidence to support the nonmoving party's case. *Celotex*, 477 U.S. at 322; *Gibson v. Gibson (In re Gibson)*, 219 B.R. 195, 198 (B.A.P. 6th Cir. 1998). The burden then shifts to the nonmoving party to demonstrate the existence of a genuine dispute. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 590 (1992). The evidence must be viewed in the light most favorable to the nonmoving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158-59 (1970). However, in responding to a proper motion for summary judgment, the nonmoving party "cannot rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact, but must 'present affirmative evidence in order to defeat a properly supported motion for summary judgment.'" *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1476 (6th Cir. 1989) (quoting *Anderson*, 477 U.S. at 257). That is, the nonmoving party has an affirmative duty to direct the court's attention to those specific portions of the record upon which it seeks to rely to create a genuine issue of material fact. *Street*, 886 F.2d at 1479.

D I S C U S S I O N

Facts

On or about December 19, 1997, Anthem and EOPO entered into the Independent Practice Association Agreement (the "IPA Agreement"). The IPA Agreement established a framework through which EOPO agreed to arrange for and facilitate the delivery of health care services to individuals enrolled in Anthem's various health plans, including the preferred provider organization, Medicare+Choice program ("ASA Program") and HMO/HIC commercial product program ("Commercial HMO"). The IPA Agreement contained separate attachments establishing the terms and conditions of EOPO's participation in each of Anthem's health plans, such as the amount of compensation provided to EOPO and the risk-sharing arrangements, if any, that applied to each program.

Section 3.19 of the IPA Agreement provided that Anthem would pay EOPO a monthly administrative fee, as set forth in the Administrative Services Participation Attachment to the IPA Agreement. The monthly fee was based on the number of individuals enrolled in the Commercial HMO and ASA Program. The Administrative Services Partic-ipation Attachment provides in relevant part:

> ANTHEM shall pay EOPO the following monthly pay-ment during the term of the Agreement, unless the Agreement is otherwise terminated, for Covered Individuals receiving Covered Services pursuant to the Plan HMO/HIC - Commercial and HMO-Medicare Risk Networks:

	Payment[1]
HMO/HIC - Commercial	$1.95 PMPM
HMO - Medicare Risk	$4.88 PMPM

(Pl.'s Mot. for Partial Summ. J., Ex. 4 at A 000236.) In addition, certain participation attachments to the IPA Agreement called for Anthem to pay EOPO capitation payments based on the number of individuals enrolled in each health plan who had selected or been assigned to an EOPO primary care physician. (*Id*. at A 000146, § 2.1.)

The IPA Agreement also provided that EOPO was entitled to certain risk-sharing incentives based on a target cost of care for services, which was adjusted for age, sex and benefit. (*Id*. at A 000145 - A 000150, § 1.1.1 - § 3.1.6.) The IPA Agreement required Anthem to establish a target cost of care for specific services. Using the agreed upon target, Anthem would project the cost of rendering services to individuals enrolled in specific health plans who had selected or been assigned to an EOPO physician and would place a dollar amount equal to the projected cost in a fund. The actual expenses incurred in providing services to enrollees were then drawn against this fund. On a calendar year basis, subject to a 120-day accrual to process of incurred but not reported claims and services, Anthem would compare the amount actually paid for services to the amount of the fund. EOPO and

[1]Although the payment amount was amended effective January 1, 2000, the requirement for monthly payment remained in effect.

Anthem agreed to share the deficit or surplus in the fund in varying percentages based on the type of service involved. For each of these risk-sharing arrangements, the accrual process was extended to 240-days upon the expiration of the IPA Agreement.

For the 1998 calendar year risk-sharing settlement, Anthem paid EOPO One Hundred Ninety-Seven Thousand Two Hundred Fifty-Two Dollars ($197,252.00) in accordance with the terms of the IPA Agree-ment. EOPO accepted the proposed risk-sharing settlement. Although the risk-sharing settlements varied by service plan and were amended from time to time, the essential formula did not change throughout the term of the IPA Agreement.

To satisfy EOPO's alleged obligations under the 1999 risk-sharing settlement and to offset any EOPO liability under the 2000 risk-sharing settlement, Anthem withheld all monthly administrative fees for September, October, November and December 2000 and capitation payments otherwise due for December 2000, totaling Six Hundred Sixty-Four Thousand Seventeen Dollars ($664,017.00).[2] According to Anthem's calculations, EOPO owed Three Hundred Sixty-Nine Thousand Two Hundred Forty Dollars ($369,240.00) and Three Hundred Forty-One Thousand Forty-Four Dollars ($341,044.00) respectively for the 1999 and 2000 risk-

[2]The undisputed and exact amount withheld totals $664,016.84. However, this figure has been rounded to the nearest dollar for convenience purposes only. The figures that compromise this amount shall also be rounded for convenience purposes only.

sharing settlements.[3] Anthem claims to have learned in late 2000 that EOPO was improperly managing its funds and was financially unstable. Anthem maintains that EOPO was failing to properly compen-sate physician members because, rather than using the lockbox[4] funds to pay physicians for work performed, EOPO used the funds to satisfy its own obligations. Once Anthem became aware of EOPO's unstable financing, Anthem withheld Two Hundred Fourteen Thousand Six Hundred Thirty-Eight Dollars ($214,638.00) of administrative fees and Four Hundred Forty-Nine Thousand Three Hundred Seventy-Nine Dollars ($449,379.00) of capitation payments in December 2000 to satisfy fully EOPO's obligations under the 1999 risk-sharing settlement and to offset any EOPO liability under the 2000 risk-sharing settlement. (Mem. in Opp'n to Pl.'s Mot. for Partial Summ. J. at 15.) Anthem contends it continued to pay funds into the lockbox.

The parties dispute risk-sharing settlement methods of

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[3]As of December 20, 2000, Anthem claimed that EOPO owed $369,240.00 under the risk-sharing settlement for calendar year 1999 and $1,053,596.00 for calendar year 2000. However, when Anthem took into account the 120-day accrual period for claims incurred but not reported, Anthem's own calculation of the year 2000 settlement decreased dramatically from $1,053,596.00 to $341,044.00. (Pl.'s Mot. for Partial Summ. J., Ex. 9, Dep. of Firmstone at 244-47.) Anthem's Executive Director, who claimed responsibility for Anthem's calculation of the 2000 risk settlement, had no specific explanation for the dramatic decrease or the specific risk settlement calculation. *Id*.

[4]The IPA Agreement required Anthem to compensate EOPO's physician members for the covered health services that they provided. Accordingly, Anthem paid funds for services rendered by EOPO physician members into a "lockbox" account that EOPO maintained. Following payment by Anthem, EOPO was to distribute the funds to the appropriate physician along with a remittance advice explaining the payment. Anthem asserts that EOPO misdirected nearly $1.4 million in funds to pay off its line of credit and fund its operations rather than distributing those funds to physicians. EOPO disputes this assertion.

calculation, totals and the amount of outstanding debt. Anthem asserts EOPO owes an outstanding debt of Forty-Six Thousand Two Hundred Sixty-Eight Dollars ($46,268.00) for the 1999 and 2000 risk-sharing settlements, not inclusive of interest under the IPA Agreement, in addition to the amount already withheld as setoff.[5] Conversely, EOPO asserts Anthem owes Four Million Five Hundred Thirteen Thousand Twenty-Three Dollars ($4,513,023.00) for outstanding administrative fees and risk-sharing settlements due and owing to EOPO pursuant to the IPA Agreement. This figure is comprised of: (i) Six Hundred Sixty-Four Thousand Seventeen Dollars ($664,017.00) in withheld management fees and capitation payments; (ii) One Million Dollars ($1,000,000.00) in monthly member payments; and (iii) Two Million Seven Hundred Nine Thousand Nine Hundred Fifty-Two Dollars ($2,709,952.00) pertaining to the 1999 and 2000 risk-sharing settlements. (First Am. Compl. and Jury Demand at 13, ¶ 34.) EOPO calculated the risk-sharing settlement figures based on an expert review of the IPA Agreement, related attachments and amendments, including the administrative fee and risk-sharing settlement provisions, and data obtained from Anthem during discovery. The parties rely on competing experts to establish their respective claims for damages.

The IPA Agreement had a term of three years, commencing

[5]Anthem's Director of Health Network Evaluation testified that it was her staff's responsibility to calculate the annual risk-sharing settlements under the IPA Agreement, yet she did not prepare the final risk settlements for the years 1999 and 2000 and had no knowledge of who, if anyone, did at Anthem. (Pl.'s Mot. for Partial Summ. J., Ex. 10, Dep. of Hsiung at 75-76.)

on January 1, 1998 and ending on December 31, 2000, unless otherwise terminated. On September 19, 2000, Anthem notified EOPO that it would not renew the IPA Agreement. Accordingly, the IPA Agreement expired by its own terms at 11:59 p.m. on December 31, 2000.

Following notice to EOPO that Anthem would not renew the IPA Agreement, Anthem sent letters to the physician members of EOPO to inform them that the IPA Agreement would not continue beyond December 31, 2000 and that, in order to continue to receive reimburse-ment from Anthem in 2001, those physicians who so desired could enter into individual contracts with Anthem. Anthem stated it was attempting to ensure continuity of care for those individuals covered through its managed care programs. The parties dispute whether the IPA Agreement prohibited Anthem from entering into individual contracts with physician members of EOPO. Anthem submits that § 6.3 of the IPA Agreement, the provision that limited Anthem's ability to contract directly with the physicians, had been deleted from the IPA Agreement. (Def.'s Notice of Filing Exs., Ex. AA-2 at A 000054 - A 000055.) EOPO never refuted the existence or validity of the letter that eliminated § 6.3 of the IPA Agreement.

EOPO amended its complaint to add NationsCare Management, Inc. ("NCM"), its wholly owned subsidiary, as a plaintiff, although NCM has no independent cause of action or claim for damages against Anthem. EOPO claims that, as a consolidated entity, it is entitled to recover its total loss of value, including the loss of value in

its equity interest in EOPO's wholly owned subsidiary. Anthem disagrees.

Anthem claims that EOPO breached the IPA Agreement by altering its corporate structure and assigning work directly related to the IPA Agreement to NCM.[6] On July 13, 1998, about six months after entering into the IPA Agreement, EOPO created NCM for the purpose of offering practice management services. NCM managed a separate entity known as the Eastern Ohio Physicians Foundation, which collaborated with local hospitals, payors, employers and other health-care organizations to address the total needs of patients. (First Am. Compl. and Jury Demand at 3-4, ¶ 7 & 8.) The IPA Agreement prohibited EOPO from assigning, delegating or transferring any of its rights or obligations, in whole or in part, to any third party without Anthem's prior written consent. (Pl.'s Mot. for Partial Summ. J., Ex. 4 at A 000255, § 8.3.) The IPA Agreement also required EOPO to notify Anthem of any changes in its operations, business or corporate form. (*Id.*, § 8.5.) Anthem asserts that EOPO effected a change in its corporate form when it established NCM. Anthem claims that EOPO transferred all systems necessary for the administration of the IPA Agreement to NCM and that under the terms of the Asset Transfer Agreement, EOPO assigned the financial component of the IPA Agreement to NCM, in violation of the IPA Agreement. Furthermore, Anthem argues EOPO expressly

[6]Anthem stated in its Motion for Summary Judgment that the extent to which EOPO assigned its obligations to NCM became clear only during discovery in this case.

designated NCM as EOPO's exclusive agent with respect to all of its managed care contracts. EOPO disputes that it assigned, delegated or transferred its rights and obligations under the IPA Agreement to NCM. EOPO argues that the Asset Transfer Agreement and Services Agreement are not binding, pointing out that neither EOPO nor NCM has been able to produce a fully executed copy of either agree-ment.

Plaintiffs[7] EOPO and NCM (collectively referred to herein as "Plaintiffs") assert eight claims against Anthem: breach of contract; accounting and injunctive relief; tortious interference with contract/prospective business relationship; breach of implied duty of good faith and fair dealing; unfair competition; punitive damages; turnover of property pursuant to 11 U.S.C. § 542(a); and disallowance of claim under 11 U.S.C. § 502(d). Plaintiffs' eight claims each arise from the IPA Agreement. Anthem filed counterclaims against EOPO seeking relief from the automatic stay and for amounts owed by EOPO under the terms of participation attachments to the IPA Agreement.

Plaintiffs move for partial summary judgment as to their first claim, breach of contract, but allege that the remaining claims present genuine issues of material fact and are not appropriate for summary judgment. Anthem objects to EOPO's Motion for Partial Summary Judgment and moves for summary judgment as to

[7]EOPO added NationsCare Management, Inc., a wholly owned subsidiary of EOPO, as a plaintiff five months after it filed its Motion for Partial Summary Judgment. (First Am. Compl. and Jury Demand.)

all eight causes of action, alleging there are no genuine issues of material fact and Anthem is entitled to judgment as a matter of law.

L E G A L A N A L Y S I S

Breach of the IPA Agreement

Generally, to establish a breach of contract claim in Ohio, the movant must demonstrate the following: (1) the existence of a binding contract, (2) the breaching party's failure to perform its contractual obligations without legal excuse, (3) the non-breaching party's substantial performance of the contract and (4) the damages suffered by the non-breaching party as a result of the breach. See e.g., *Am. Sales, Inc. v. BOFFO*, 593 N.E.2d 316 (1991); *Garofalo v. Chicago Title Ins. Co.*, 661 N.E.2d 218 (1995).

Plaintiffs claim Anthem breached the December 19, 1997 IPA Agreement by (1) wrongfully withholding a total of Six Hundred Sixty-Four Thousand Seventeen Dollars ($664,017.00) in administrative fees for the months of September, October, November and December 2000 and capitation payments and (2) by failing to reimburse Plaintiffs the sum of Three Million Eight Hundred Forty-Nine Thousand Seven Dollars ($3,849,007.00) for the risk-sharing settlements for 1999 and 2000. In addition, EOPO seeks compensatory damages in excess of Thirteen Million Three Hundred Thousand Dollars ($13,300,000.00).[8] (First Am. Compl. and Jury

[8]Plaintiffs seek $13,300,000.00 in damages in their First Amended Complaint and Jury Demand. This damages figure was calculated by adding the $4,513,023.00 in alleged damages identified in the report of EOPO's expert to the $8,858,169.00

Demand at 16, ¶ 40.)

Anthem asserts it did not breach the IPA Agreement because (1) it was entitled to set-off the administrative fees and capitation payments against the debts that EOPO owed to it under the 1999 and 2000 risk-sharing settlements, (2) EOPO failed to substantially per-form its obligations under the IPA Agreement and (3) EOPO suffered no damages as a result of Anthem's actions. In addition, Anthem claims EOPO breached the IPA Agreement by altering its corporate structure.

Each side maintains that there are no issues of material fact regarding Plaintiffs' first cause of action - breach of con-tract - and they assert summary judgment is appropriate. It is undisputed that, although the IPA Agreement required the monthly pay-ment of administrative fees and did not provide a contractual right to setoff, Anthem withheld all monthly administrative fees for the months of September, October, November and December 2000 and capitation payments, totaling Six Hundred Sixty-Four Thousand Seventeen Dollars ($664,017.00). It is also undisputed that the IPA Agreement provides that the annual risk-sharing settlements would not be calculated and due until 120-days after the end of the calendar year and that no final risk-sharing settlement would be calculated until 240-days after termination of the IPA Agreement.

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in alleged lost valuation damages identified in the report of a different EOPO expert. (Pl.'s Mot. for Leave to File First Am. Compl. at 4-5.) Anthem asserts this is not a proper means of measuring Plaintiffs' damages. EOPO's alleged damages in this amount were claimed in the First Amended Complaint and Jury Demand, which was filed after the Motion for Partial Summary Judgment.

Accordingly, the calendar year 2000 risk-sharing settlement would not be able to be calculated until 120-days after the end of the calendar year and no final risk-sharing settlement would be calculated until 240-days after termination of the IPA Agreement. However, the parties dispute the amount of risk-sharing settlement due respectively for the calendar years of 1999 and 2000.

In the course of this litigation, both parties calculated extremely different amounts due for the 1999 and 2000 risk-sharing settlements. EOPO asserts that, based on a financial review of the 1999 and 2000 risk-sharing settlements pursuant to the terms of the IPA Agreement, its expert found that Anthem owes Plaintiffs One Million One Hundred Twenty-Three Thousand Eight Hundred Forty-Seven Dollars ($1,123,847.00) for the 1999 risk-sharing settlement and Two Million Seven Hundred Twenty-Five Thousand One Hundred Fifty-Nine Dollars ($2,725,159.00) for the 2000 risk-sharing settlement, totaling Three Million Eight Hundred Forty-Nine Thousand Seven Dollars ($3,849,007.00) of risk-sharing settlement debt. (Reply Mem. in Supp. of Pl.'s Mot. for Partial Summ. J. at 10.) When combined with the Six Hundred Sixty-Four Thousand Seventeen Dollars ($664,017.00) of outstanding administrative fees and capitation payments, Plaintiffs claim that Anthem's breach of the IPA Agreement resulted in damages of Four Million Five Hundred Thirteen Thousand Twenty-Three Dollars ($4,513,023.00). (*Id*. at 11.) Anthem challenges EOPO's expert, asserting that he employed miscalculations, faulty assumptions and overreaching adjustments,

and attempted to alter the negotiated terms of the IPA Agreement's participation attachments.

In contrast, Anthem asserts that EOPO owes Anthem Three Hundred Sixty-Nine Thousand Two Hundred Forty Dollars ($369,240.00) for the 1999 risk-sharing settlement and Three Hundred Forty-One Thousand Forty-Four Dollars ($341,044.00) for the 2000 risk-sharing settlement. Having previously setoff Six Hundred Sixty-Four Thousand

Seventeen Dollars ($664,017.00), Anthem asserts EOPO owes a remaining Forty-Six Thousand Two Hundred Sixty-Seven Dollars ($46,267.00). EOPO challenges the validity of Anthem's figures, questioning how Anthem's Executive Director, who claimed responsibility for Anthem's calcula-tion of the 2000 risk settlement, (i) could not provide the formula used to calculate the risk-sharing settlement and (ii) failed to provide an explanation for the dramatic decrease between One Million Fifty-Two Thousand Five Hundred Ninety-Six Dollars ($1,052,596.00), the amount first claimed for the calendar year 2000, and Three Hundred Forty-One Thousand Forty-Four Dollars ($341,044.00), the later amount claimed.

The parties dispute (i) the method for calculating and (ii) the amount due for the 1999 and 2000 risk-sharing settlements. The risk-sharing settlement figures affect the damages suffered by either party and ultimately impact the determination of the breach of contract claim.

The parties also dispute whether EOPO assigned and delegated to NCM work directly related to the IPA Agreement. The IPA Agreement prohibited EOPO from assigning or delegating obligations created under the IPA Agreement to any third party without Anthem's written consent. The parties dispute the nature and enforceability of the Asset Trans-fer Agreement. The assignment or delegation of work to NCM affects whether EOPO materially breached the contract. Therefore, genuine issues of

material fact exist as to the breach of contract issue and summary judgment is not appropriate.

Accordingly, Plaintiff's Motion for Partial Summary Judgment and Anthem's Motion for Summary Judgment as each pertains to Plain-tiffs' first cause of action - breach of contract - are denied.

Accounting or Injunctive Relief

Plaintiffs' second claim for relief, accounting or injunc-tive relief, is simply a repackaged version of their first claim for relief, *i.e.*, breach of contract. Plaintiffs claim that, pursuant to the IPA Agreement, they are entitled to review and verify all data and methodologies employed by Anthem in the calculations of the calendar year risk-sharing settlements. In other words, EOPO alleges that Anthem breached the IPA Agreement by failing to produce financial and reporting data to enable Plaintiffs to audit the relevant periods. This is not an additional cause for relief, only a restatement of the breach of contract claim.

Also, where an adequate remedy exists at law, an equitable remedy is improper. An accounting is an equitable remedy. *See, e.g., McNulty v. PLS Acquisition Corp.*, No. 79025, 2002 Ohio App. LEXIS 7038, at *35 (8th App. Dist. Dec. 26, 2002). As reflected in EOPO's request for relief in the amount of Four Million Five Hundred Thirteen Thousand Twenty-Three Dollars

($4,513,023.00) for its breach of contract claim, an adequate remedy at law exists. Accordingly, Plain-tiffs' second cause of action is inappropriate and Anthem's Motion for Summary Judgment regarding Plaintiffs' second claim is granted.

Tortious Interference with Contract or Prospective Business Relationship

In their third claim for relief, Plaintiffs attempt to repackage their breach of contract claim as one of tortious interference with contract or prospective business relationships. Plaintiffs claim that Anthem contracted with EOPO participating physicians in direct violation of the IPA Agreement. Plaintiffs allege that Anthem induced physicians to terminate, with no legal justification for doing so, their contractual relationships with EOPO. Plaintiffs state that as a consequence of Anthem's conduct, the EOPO Network was effectively destroyed and Defendant suffered damages. Anthem asserts that it acted properly in contracting with EOPO participating physicians and such action did not violate the IPA Agreement. Whether Anthem is prohibited to enter into separate agree-ments with EOPO physicians turns upon the terms of the IPA Agreement. Although painted as a tort claim, the heart of this dispute is not in tort, but in breach of contract. Accordingly, Plaintiffs' third cause of action is inappropriate and Anthem's Motion for Summary Judgment is granted as to this Count.

Implied Duty of Good Faith and Fair Dealing

Plaintiffs contend, in their forth cause of action, that Anthem breached the IPA Agreement's implied duty of good faith and

fair dealing by intentionally and deliberately undercutting EOPO's benefit of the contract and minimizing Anthem's obligations under the contract. While an implied covenant may exist as a matter of law, Ohio law does not provide a separate cause of action for breach of good faith. *See e.g.*, *Northeast Ohio College of Massotherapy v. Burek*, 759 N.E.2d 869 (2001) (holding that good faith does not stand alone as a cause of action but is part of a breach of contract claim). Accordingly, an alleged breach of implied duty of good faith and fair dealing does not establish a separate basis for recovery. Anthem's Motion for Summary Judgment regarding count four, an implied duty of good faith and fair dealing, is granted.

Unfair Competition

In Plaintiffs' fifth cause of action, unfair competition, Plaintiffs allege that Anthem engaged in unfair competition by with-holding reimbursement to EOPO, changing the reimbursement under the IPA Agreement, entering into contracts with EOPO member physicians and terminating EOPO's participation in the ASA Program in violation of federal regulations. These assertions are already encompassed by Plaintiffs' breach of contract cause of action and cannot properly be brought as an unfair competition claim. Accordingly, summary judgment is granted in Anthem's favor pertaining to the fifth cause of action, unfair competition.

Punitive Damages

Plaintiffs' sixth claim for relief purports to establish

a separate cause of action for punitive damages. However, punitive damages are "a mere *incident* of the cause of action, rather than . . . a cause of action in and of itself." *Bishop v. Grdina*, 485 N.E. 2d 704, 705 (1985). "[N]o civil action may be maintained simply for pun-itive damages." *See, e.g.*, *Moskovitz v. Mt. Sinai Med. Ctr.*, 635 N.E. 2d 331, 342 (1994). Moreover, punitive damages are not appropriate as an element of damages on a breach of contract claim. Accordingly, Anthem is entitled to summary judgment pertaining to EOPO's sixth claim for relief, punitive damages.

Turnover of Property and Disallowance of Claim

Plaintiffs seek turnover of property pursuant to 11 U.S.C. § 542(a) and disallowance of claims pursuant to 11 U.S.C. § 502(d) as their seventh and eighth claims for relief. However, these are methods of recovery, not independent causes of action. Accordingly, summary judgment is granted in favor of Anthem pertaining to the seventh and eighth causes of action, but this does not mean that turnover and/or disallowance of claims may not be appropriate remedies in this case.

An appropriate order shall enter.

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HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
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EASTERN OHIO PHYSICIANS ORGANIZATION, INC.,	*	**CASE NUMBER 01-40410**
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Debtor.	*	
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Plaintiff,	*	
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vs.	*	**ADVERSARY NUMBER 02-4020**
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COMMUNITY INSURANCE COMPANY d.b.a. ANTHEM BLUE CROSS AND BLUE SHIELD,	*	
	*	
Defendant.	*	
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O R D E R
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For the reasons set forth in this Court's Memorandum Opinion entered this date, Plaintiff's Motion for Partial Summary Judgment as to its first claim for relief only, which is a claim for breach of contract, is denied. Anthem's Motion for Summary Judgment as it pertains to Plaintiffs' first claim, breach of contract, is denied. Anthem's Motion for Summary Judgment regarding Plaintiffs' second claim, accounting and injunctive relief; third claim, tortious interference with contract or prospective business

relationship; fourth claim, breach of the implied duty of good faith and fair dealing; fifth claim, unfair competition; sixth claim, punitive damages; seventh claim, turnover of property pursuant to 11 U.S.C. § 542(a); and eighth claim, disallowance of claim under 11 U.S.C. § 502(d), respectively, are granted. Therefore, Anthem's Motion for Summary Judgment is granted in part and denied in part. This adversary proceeding shall go forward as a breach of contract cause of action only.

IT IS SO ORDERED.

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HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Opinion and Order were placed in the United States Mail this _____ day of June, 2005, addressed to:

ORLA E. COLLIER, III, ESQ., 88 East Broad Street, Suite 900, Columbus, OH 43215.

MICHAEL A. GALLO, ESQ., 20 Federal Plaza West, Suite 600, Youngstown, OH 44503.

CARL D. RAFOTH, ESQ., City Centre One Building, Suite 300, Youngstown, OH 44503.

JOHN F. KOSTELNIK, ESQ. and STEPHEN F. GLADSTONE, ESQ., 55 Public Square, 19th Floor, Cleveland, OH 44113.

SAUL EISEN, United States Trustee, BP America

Building, 200 Public Square, 20th Floor, Suite 3300, Cleveland, OH 44114.

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JOANNA M. ARMSTRONG